

1. Areas where questions exist on interpretation of the regulatory standards, including potential solutions.

a. Different inspectors interpret watercourse classifications differently over time. This makes every filing of a THP problematic in the field. Continuous defined bed, bank and channel connected to another watercourse do not seem to be required any more. The current definition of, “capable of transporting sediment” allows for conflicting interpretations.

Solution: Create a classification system where interpretations are replicable.

b. Different inspectors interpret watercourse classifications differently over time. As a result, during the life of a THP, inspectors have issued violations based on a change in the appearance or interpretation of a watercourse, specifically newly identified class III watercourses or class III watercourses that were later determined to be class II. The latter is a problem because a DFG permit is required to cross a class II and if it was crossed prior to upgrading classification; violations have been issued after the fact. These violations due to classification alterations should not be retroactive. Since members of the review team change constantly there is little opportunity to develop consistency and understanding with an individual.

Solution: Field inspectors and review team members should recognize that stream classifications need to be locked in when the plan is approved and until the plan is closed and only changed after a mutual agreement between the State and the plan submitter.

c. A class IV watercourse is defined as a man-made watercourse, usually downstream, established domestic, agricultural, hydroelectric supply or other beneficial use. A class I watercourse has fish always or seasonally present onsite and includes habitat to sustain fish migration and spawning. A hydroelectric reservoir with planted fish in it seems to bring about difficulty when providing watercourse and lake protection zones. Both interpretations of protection requirements have been made by field inspectors in the past which fit both the definitions of class I and class IV WLPZ's. Establishing a class I protection zone starting at the high water mark is impractical in many instances for maintenance and public safety concerns. The presence of planted, non self-sustaining fish populations is at present an indicator for field inspectors to recommend class I WLPZ distances, but should be discouraged. Because the lake is unnatural, and levels are controlled for hydroelectric operational purposes, protections should reflect the requirements and intentions of those operations.

Solution: Clarify which classification should be used in which instance for more predictability. Clarify whether a class IV watercourse may or may not have the presence of fish.

2. Issues encountered in achieving compliance with the regulatory standard of rules, including potential solutions.

a. It is understood that State inspectors and private foresters are not partners, but they should not be adversaries either. At this time it appears that inspectors are unnecessarily antagonistic about issues during inspections. They seem unwilling to listen to innovative approaches to solve problems from the private sector, but expect anything they suggest to be done to their specifications. Their suggestions are termed recommendations, but they must be done or the plan is recommended for denial. The private RPF's professional opinion seems to have no relevance unless the individual from the State agrees with that opinion. Open discussion is often inhibited or stifled by the threat of authoritative intervention.

Solution: Suggest an open discussion on conflictive issues rather than a clear cut right or wrong. This should result in proper resource protections while allowing new methods to be utilized.

b. When dealing with wildlife issues CDF often defers to DFG as the leading authority. Therefore, CDF often complies with whatever DFG recommends, regardless if scientific evidence is presented which may support an alternative approach. DFG does not always use the most current or best scientific evidence when making their determinations. CDF requires a complete scientific evaluation of all aspects of a project from the RPF yet CDF does not appear to require DFG to provide the same documentation of justification when they recommend denial of a THP for wildlife reasons.

Solution: When an issue is at hand CDF should require DFG to freely share documentation with the RPF whom they require share information with them. CDF should evaluate and take into account the findings of all reputable sources of information when dealing with wildlife issues. CDF is the lead agency and should use that authority appropriately.

c. There are separate definitions of "Take" between federal and State Endangered Species Acts. The federal version is stricter than the State version. Members of the State review team seem to be using the federal definition in many instances when discussing species that are not federally listed.

Solution: Clarify what the State definition is to all parties. Clarify that protections which are not required by law are not enforceable.

d. It is assumed that both parties have a common goal of accomplishing a project while protecting the environment. Lately it seems that writing a violation or causing withdrawal of the THP for relatively minor issues takes precedence over making a project workable. The emphasis should be on protecting resources as a part of the process not using the process to stop projects from occurring.

Solution: All parties need to work cooperatively to get the best results.

e. Review team members all have opinions about the right way to do things. At times they make requirements that seem unrealistic during inspections. When asked for a code reference for these requirements they occasionally are unwilling or unable to provide one. Without a code reference, the RPF is not able to determine if there is agreement on the correct interpretation of the rule. If there truly is no code reference, this requirement should not be made. In some instances rules that do exist are enforced to a higher standard if the “underground” rule (with no code reference) is not accepted by the RPF.

Solution: Only enforce established rules in a clear and consistent manner.

3. Suggested regulatory modifications which would either 1) clarify existing rule language to better achieve the intended resource protection, or 2) which would reduce regulatory inefficiencies and maintain the same or better level of protection.

a. Communication and requirements between the review team chair, field inspector, and the review team can require several THP changes and replacement page submittals depending on the priorities and opinions of each. In some instances, members of the review team find new issues in different portions of the plan that were not initially mentioned, causing plan approval to be delayed. Each time issues are dealt with and replacement pages are submitted, new issues are brought up from a different area of the plan that were not previously addressed. This reiterative process consumes both State and RPF time, and can delay the approval process of a plan for months and operations for as much as a year depending on seasons and limited operating periods.

Solution: Issues found on first review and during the Pre Harvest Inspection should be the only issues subject to change prior to the approval of a THP. Continuous comments from different areas of the plan should be discouraged.

b. Wildlife is an important part of a diverse forest environment. Currently most issues associated with sensitive species are being dealt with from the most conservative approach which can greatly hinder a successful THP. Forest management seems to be considered as a negative impact on wildlife by the State. Careful management can improve habitat for many species. Many of the mitigation measures are so restrictive that they are creating a disincentive for a landowner to have sensitive species on their property.

Solution: The method of handling sensitive species should be changed to create a positive incentive to species habitat for landowners.

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